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NO. COA09-330

NORTH CAROLINA COURT OF APPEALS

Filed: 20 October 2009

STATE OF NORTH CAROLINA

v.

Edgecombe County
No. 07 CRS 052431

LAQUELL JAMAL BLACK

Appeal by defendant from judgment entered 14 October 2008 by Judge William C. Griffin, Jr. in Superior Court, Edgecombe County. Heard in the Court of Appeals 19 October 2009.

Attorney General Roy Cooper, by Special Deputy Attorney General Donald R. Teeter, Sr., for the State.

Mills & Economos, L.L.P., by Larry C. Economos for defendant-appellant.

WYNN, Judge.

Where the State's evidence is sufficient only to raise suspicion or conjecture regarding an element of the offense charged, a defendant's motion to dismiss must be allowed.¹ Here, Defendant Laquell Jamal Black appeals from a jury verdict finding him guilty of possession of a stolen firearm, arguing the State offered insufficient evidence to sustain his conviction. Because the evidence presented at trial was insufficient to establish an

¹ *State v. Grooms*, 353 N.C. 50, 79, 540 S.E.2d 713, 731 (2000) (citations omitted), *cert. denied*, 534 U.S. 838, 151 L. Ed. 2d 54 (2001).

element of the crime charged, that Defendant knew or had reasonable grounds to believe the firearm was stolen, we reverse.

On 23 June 2007, Officer Bruce Edwards of the Tarboro Police Department stopped a vehicle on suspicion of operating with fictitious tags. Defendant was a passenger in the vehicle. During the stop, Officer Edwards detected a strong odor of alcohol coming from within the vehicle. Suspecting Defendant was underage, the officer asked defendant to step out of the vehicle. Defendant complied with Officer Edwards' request and Officer Edwards began to question him. During the questioning, Officer Edwards noticed "something very heavy in one of [Defendant's] pockets" and that one of Defendant's pockets appeared to be hanging down much lower than the other. Believing that the item in his pocket may be a weapon, the officer asked Defendant if he had any weapons on his person. Defendant stated he did not have a weapon but "took a couple of steps back" and appeared to become nervous.

Officer Edwards proceeded to conduct a *Terry* frisk of defendant for weapons and contraband. As Officer Edwards frisked defendant, Defendant took a couple of steps back. Officer Edwards then felt what he believed to be a "large bulky item" that "felt like steel or something large[.]" After the officer "hit the object[,]" Defendant "really went to take a couple of steps back[.]" Officer Edwards told Defendant to stop moving but Defendant continued to back up. At that point, the officer reached into Defendant's pocket and withdrew a .38 caliber snub-nosed

revolver. Officer Edwards took Defendant into custody and later determined the revolver had been stolen.

The Grand Jury for Edgecombe County returned an indictment charging defendant with one count of possession of a stolen firearm and one count of carrying a concealed weapon on 7 January 2008. After a trial on 14 October 2008, the jury returned a verdict finding defendant guilty of possession of a stolen firearm. Although submitted to the jury, the jury did not return a verdict on the charge of carrying a concealed weapon. The trial court entered judgment pursuant to the jury's verdict, sentencing defendant to a mitigated term of four to five months' imprisonment. On 20 October 2008, the State entered a dismissal of the charge of carrying a concealed weapon. Defendant gave notice of appeal in open court.

"In ruling on a defendant's motion to dismiss, the trial court must determine whether the State has presented substantial evidence (1) of each essential element of the offense and (2) of the defendant's being the perpetrator." *State v. Boyd*, 177 N.C. App. 165, 175, 628 S.E.2d 796, 805 (2006) (citation omitted). "When considering a motion to dismiss, the trial court must view all of the evidence presented 'in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor.'" *Id.* (quoting *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995)). "[H]owever, if the evidence is sufficient only to raise a suspicion or conjecture as

to either the commission of the offense or the identity of the defendant as the perpetrator, the motion to dismiss must be allowed[.]” *Grooms*, 353 N.C. at 79, 540 S.E.2d at 731 (internal quotation marks and citation omitted).

Defendant’s sole argument on appeal is that the trial court erred in denying his motion to dismiss the charge of possession of a stolen firearm because the State failed to present sufficient evidence that he knew or had reasonable grounds to believe the property was stolen. To survive a motion to dismiss, the State must present substantial evidence on each element of the charge of possession of a stolen firearm, including that “the defendant knew or had reasonable grounds to believe the property was stolen[.]” *State v. Brown*, 182 N.C. App. 277, 281, 641 S.E.2d 850, 853 (2007).

Here, there was no testimony or evidence which tended to show Defendant had any knowledge about from where the revolver came. The State argues that Defendant’s act of backing up while being frisked by the arresting officer constitutes an evidentiary admission and is consistent with guilty knowledge of the revolver’s stolen character. While “an accused’s flight is evidence of consciousness of guilt and therefore of guilt itself[.]” Defendant’s actions during the frisk do not rise to the level of flight and do not imply any knowledge by Defendant as to the stolen nature of the revolver. *State v. Parker*, 316 N.C. 295, 304, 341 S.E.2d 555, 559-60 (1986); compare *Brown*, 182 N.C. App. at 282, 641 S.E.2d at 853 (holding evidence insufficient where live-in girlfriend “testified that defendant asked her to tell the officers

a story about finding the bag of guns after a man threw it into the area near the apartment building" but where defendant testified to the opposite and there "was no testimony or evidence which tended to show that defendant had any knowledge about from where the guns came"), *with State v. Taylor*, 64 N.C. App. 165, 169, 307 S.E.2d 173, 176 (1983) (holding evidence sufficient where defendant, when confronted, "removed the firearm from his coat, stooped near a car and attempted to surreptitiously hide or dispose of it by throwing it into nearby bushes"), *aff'd in part and rev'd on other grounds in part*, 311 N.C. 380, 317 S.E.2d 369 (1984).

Further, the State presented no evidence tending to show when or how Defendant came into possession of the revolver. Without more, the State's evidence that Defendant backed away from the officer during the frisk did no more than raise a suspicion that Defendant may have known or had reason to know that the revolver was stolen. Accordingly, we hold the trial court erred in failing to grant Defendant's motion to dismiss the charge of possession of a stolen firearm because the State failed to present substantial evidence that Defendant knew or had reason to believe that the revolver was stolen.

Reversed.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).